



Federal Communications Commission
Washington, D.C. 20554

January 29, 2015

DA 15-124

Via Certified Mail, Return Receipt Requested

Efrain O. Saille
1713 S. State Avenue
Indianapolis, IN 46203

**Re: Notice of Interim Default Payment Obligation for Auction 94 Construction Permits
FM1033-A (Cotulla, TX) and FM1048-C1 (Presidio, TX)**

DO NOT DISCARD THIS IMPORTANT NOTICE
OF A DEMAND FOR PAYMENT
OF A DEBT OWED THE UNITED STATES AND ORDER OF PAYMENT

Dear Mr. Saille:

This Order provides notice and demands payment of the interim default payment obligation with respect to your default arising out of Auction 94. As described fully below, you were the winning bidder in Auction 94 for FM broadcast construction permits FM1033-A (Cotulla, TX) and FM1048-C1 (Presidio, TX) (hereinafter, “the Permits”).¹ After the close of Auction 94, you defaulted on your payment obligations for your winning bids. Thus, you became subject to the default provisions of section 1.2104(g)(2) of the Commission’s rules.²

On May 14, 2013, the Media Bureau and the Wireless Telecommunications Bureau (“Bureaus”) announced the winning bidders in Auction 94, which included you.³ The Bureaus also announced that by no later than May 29, 2013, each Auction 94 winning bidder was required to have on deposit enough funds to bring each winning bidder’s deposit to twenty percent (20%) of its winning bid(s).⁴ If a winning bidder’s upfront payment was not sufficient to meet the down payment requirement, the winning bidder would be required to deposit sufficient funds to meet its down payment.⁵ The Bureaus further instructed that by June 12, 2013, each winning bidder was required to submit a final payment for the balance of the net amount of each winning bid.⁶ The Bureaus also announced that by midnight on July 24, 2013, all winning bidders were required to submit their long-form applications.⁷

¹ See Auction of FM Broadcast Construction Permit Closes; Winning Bidders Announced for Auction 94, *Public Notice*, 28 FCC Rcd 6973, 6984-85 Attach. A (2013) (“*Auction 94 Closing Public Notice*”).

² 47 C.F.R. § 1.2104(g)(2); see also *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6976 ¶ 13.

³ See *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6984-85 Attach. A.

⁴ *Id.* at 6974 ¶ 3; see also 47 C.F.R. § 1.2107(b).

⁵ *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6974 ¶ 3.

⁶ *Id.* at 6974 ¶ 6; see also 47 C.F.R. § 1.2109(a).

⁷ *Auction 94 Closing Public Notice*, 28 FCC Rcd at 6977 ¶ 21.

Your net winning bid was \$19,825.00.⁸ The Bureaus applied the \$3,000.00 upfront payment amount that you had on deposit toward your down payment obligation of \$3,965.00 and notified you that the additional amount due to meet your down payment obligation was \$965.00.⁹ You failed to remit your required down payment due by May 29, 2013. Subsequently, you failed to submit the final payment of \$15,860.00 due by June 12, 2013. Additionally, you did not submit a long-form application for the Permits. Thus, you became subject to the default provisions of section 1.2104(g)(2) of the Commission's rules.¹⁰

Under the Commission's rules, at the close of the auction a winning bidder assumes a binding obligation to pay the full amount of its accepted winning bid.¹¹ A bidder who defaults on that obligation or is disqualified is considered to be a defaulting bidder under the Commission's rules and is subject to a default payment.¹² The default payment has two components: a deficiency payment and an additional payment amount.¹³ The deficiency payment component applies only in the event that the subsequent winning bid the next time a construction permit for the allotment is won is less than the defaulted bid. The deficiency payment amount is the difference between the bidder's net defaulted bid and the subsequent net winning bid, or the difference between the bidder's gross defaulted bid and the subsequent gross winning bid, whichever is less.¹⁴ The additional payment amount is owed by each defaulting bidder.¹⁵ Pursuant to the rule in effect at the time of Auction 94, the additional payment amount is equal to twenty percent (20%) of the defaulter's bid, or the subsequent winning bid, whichever is less.¹⁶

Until a construction permit for the relevant allotment is won in a subsequent auction, the Commission cannot determine the full amount of the default payment that is owed. Pursuant to its rules, the Commission therefore assesses an interim default payment amounting to twenty percent (20%) of the net winning bids.¹⁷ Once subsequent winning bids for the relevant allotment are established, the remaining amount owed by you, if any, is then assessed.

⁸ See *id.* at 6984-85 Attach. A.

⁹ See *id.* at 6990 Attach. B. On May 14, 2013, Commission staff sent you a pre-filled Remittance Advice Form (Form 159) showing the amount of your first down payment and final payment in an overnight mailing that also included a copy of the *Auction 94 Closing Public Notice*.

¹⁰ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹¹ 47 C.F.R. § 1.2104(g)(2).

¹² 47 C.F.R. §§ 1.2104(g)(2), 1.2109.

¹³ 47 C.F.R. § 1.2104(g)(2).

¹⁴ 47 C.F.R. § 1.2104(g)(2)(i).

¹⁵ 47 C.F.R. § 1.2104(g)(2).

¹⁶ See *id.*; Auction of FM Broadcast Construction Permits Rescheduled for April 23, 2013; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 94, *Public Notice*, 27 FCC Rcd 14299, 14341 ¶ 171 (2013) (adopting 20 percent of the applicable bid as the additional default payment) ("*Auction 94 Procedures Public Notice*").

¹⁷ See Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 434 ¶ 102 (1997); Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5563 n.51 (1994); *Auction 94 Procedures Public Notice*, 27 FCC Rcd at 14341 ¶ 171; see also Implementation of Section 309(j) of the Communications Act — Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348, 2382-83 ¶ 197 (1994).

Accordingly, you are considered to be in default on the Permits for which you were the winning bidder in Auction 94, and you are subject to the applicable default payment as shown in Attachment A.¹⁸ Pursuant to section 1.2104(g)(2) of the Commission's rules and the procedures established for Auction 94, you owe an interim default payment of \$3,965.00, which is twenty percent (20%) of your total net winning bids of \$19,825.00.¹⁹ Pursuant to section 1.2106(e) of the rules, we will apply your \$3,000.00 payment on deposit toward satisfying this interim default payment obligation.²⁰ After doing so, you owe an outstanding balance of \$965.00. This debt to the United States is payable in full and without further demand within 30 days of the date of this Order in accordance with the Important Notice Information provided below and Payment Instructions in Attachment B. Additionally, once subsequent winning bids are established for the relevant allotment, we will determine your final default payment obligation. If an additional payment is required, a further order will assess such payment.²¹

Important Notice Information

The following provides notification of procedures and information required by the Debt Collection Improvement Act of 1996 ("DCIA").²² The outstanding balance shown in Attachment A is a debt you owe to the United States. It is payable in full, immediately, and without further demand, and payment must be received no later than the payment due date, which is 30 days from the date of this Order ("Due Date") in accordance with the Payment Instructions in Attachment B.²³ Any portion of the debt unpaid at the end of the Due Date will be considered delinquent and administrative charges (incurred for processing and handling delinquent debts),²⁴ interest,²⁵ and penalties²⁶ will accrue beginning from that date. Interest accrues at a minimum annual rate established annually by the United States Treasury in accordance with 31 U.S.C. § 3717.²⁷ However, the Commission will waive payment of the accrued interest, if the full amount of the debt is paid within 30 days of the Due Date.²⁸ A penalty of six percent (6%) accrues on any portion of the debt that remains unpaid for more than 90 days from the Due Date.²⁹ In addition to these charges, the Commission may initiate administrative offset,³⁰ and it may refer the

¹⁸ 47 C.F.R. §§ 1.2104(g)(2), 1.2109(c).

¹⁹ 47 C.F.R. § 1.2104(g)(2).

²⁰ 47 C.F.R. § 1.2106(e).

²¹ See Mountain Solutions Ltd., Inc., *Memorandum Opinion and Order*, 13 FCC Rcd 21983, 21997 ¶ 25 (1998).

²² Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified in relevant part at 31 U.S.C. §§ 3716 (administrative offset) and 3717 (interest and penalty on claims)); see also 47 C.F.R. §§ 1.1901, 1.1911, 1.1912, 1.1940, 1.1941.

²³ As noted in Attachment B, if the 30th day falls on a non-business day, payment must be received on the next business day.

²⁴ 31 U.S.C. § 3717(e)(1); 47 C.F.R. § 1.1940(c).

²⁵ 31 U.S.C. § 3717(b); 47 C.F.R. § 1.1940(b).

²⁶ 31 U.S.C. § 3717(e)(2); 47 C.F.R. § 1.1940(d).

²⁷ 47 C.F.R. § 1.1940(b).

²⁸ 31 U.S.C. § 3717(d); 47 C.F.R. § 1.1940(g).

²⁹ 31 U.S.C. § 3717(e)(2); 47 C.F.R. § 1.1940(d).

³⁰ 47 C.F.R. § 1.1912. Under this provision the Commission may refer the debt to the United States Treasury for centralized administrative offset whereby, subject to certain exceptions, money otherwise payable to the debtor by the United States government may be used to satisfy the debt. In addition, "unless otherwise prohibited by law," the

delinquent debt to the United States Treasury or the Department of Justice (“DOJ”) for further collection action.³¹ The United States Treasury will impose an additional administrative collection charge,³² and it may also commence administrative offset.³³ An additional surcharge may be imposed, if DOJ initiates judicial action to recover judgment.³⁴ Furthermore, any portion of the debt that is unpaid after the Due Date is a delinquent debt, which will trigger application of the Commission’s red light procedures at 47 C.F.R. § 1.1910.

Ordering Clauses

Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 1.2104(g)(2) of the Commission’s rules, 47 C.F.R. § 1.2104(g)(2), Efrain O. Saille is ASSESSED an interim default payment of \$965.00, as computed in Attachment A.

IT IS FURTHER ORDERED that, pursuant to sections 1.2104 and 1.2106 of the Commission’s rules, 47 C.F.R. §§ 1.2104 and 1.2106, Efrain O. Saille’s funds on deposit with the Commission will be applied toward satisfying the interim default payment obligation.

IT IS FURTHER ORDERED that, pursuant to section 1.2104(g)(2) of the Commission’s rules, 47 C.F.R. § 1.2104(g)(2), Efrain O. Saille will be subject to a final default payment for his defaulted winning bids for during Auction 94 for construction permits FM1033-A (Cotulla, TX) and FM1048-C1 (Presidio, TX) once the allotment associated with the construction permit is won in a subsequent auction and the full payment amount is determined.

IT IS FURTHER ORDERED that Efrain O. Saille’s debt of \$965.00 is payable in full and without further demand, and it must be paid within 30 days of the date of this Order (the Due Date), in accordance with the payment instructions in Attachment B, and any portion of the debt unpaid after the Due Date is delinquent, and under 31 U.S.C. § 3717, administrative charges, interest, and penalties will accrue.

Commission may conduct non-centralized, ad hoc case-by-case offsets when centralized offset is unavailable or inappropriate. 47 C.F.R. § 1.1912(c).

³¹ 31 U.S.C. §§ 3711(g), 3716; 28 U.S.C. § 3001 *et seq.*; 47 C.F.R. § 1.1912. Transfer may be made without further notice at any time after the Due Date.

³² 31 U.S.C. § 3717(e); 31 C.F.R. § 285.12(j).

³³ 31 U.S.C. § 3716; 47 C.F.R. § 1.1912(b) (mandatory centralized administrative offset).

³⁴ 28 U.S.C. § 3011.

Efrain O. Saille
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IT IS FURTHER ORDERED that this Order and a FCC Remittance Advice Form (FCC Form 159, Version 2/03) shall be sent to Efrain O. Saille by certified mail, return receipt requested. This action is taken pursuant to authority delegated by section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

Attachments

ATTACHMENT A

Interim Default Payment Report

FM Broadcast Construction Permit Numbers	Gross Bid Auction 94	Net Bid Auction 94	Interim Payment Amount (20%)
FM1033-A (Cotulla, TX)	\$1,500.00	\$975.00	\$195.00
FM1048-C1 (Presidio, TX)	\$29,000.00	\$18,850.00	\$3,770.00

Interim Default Amount	\$3,965.00
Less Total of Amounts on Deposit	\$3,000.00
Outstanding Balance	\$965.00

ATTACHMENT B

Payment Instructions

The following information is being provided to assist you in making your payment.

All payments must be made in U.S. currency in the form of a wire transfer. No personal checks, cashier's checks or other forms of payment will be accepted. Wire transfer payments must be received by 6:00 PM Eastern Time, no later than thirty days from the date of this Order; however, if the 30th day falls on a non-business day, e.g., Saturday, Sunday or holiday, it is due the next business day. Applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, applicants will need the following information to properly effect the transmittal:

ABA Routing Number: **021030004**

Receiving Bank: **TREAS NYC**

33 Liberty Street

New York, NY 10045

ACCOUNT NAME: **FCC**

ACCOUNT NUMBER: **27000001**

OBI Field: (Skip one space between each information item) "AUCTIONPAY"

APPLICANT FRN: (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: "**APEN**")

FCC CODE 1: (same as FCC Form 159, Block 28A: ("94"))

PAYOR NAME: (same as FCC Form 159, Block 2)

LOCKBOX NO.: **#979088**

Please fax a completed remittance advice (Form 159) to U.S. Bank, St. Louis, Missouri at (314) 418-4232 **at least one hour before initiating the wire transfer** (but on the same business day).

For questions regarding the submission of payment, and the FCC Form 159, contact Gail Glasser, Office of the Managing Director, Financial Operations, Auctions Accounting Group, at (202) 418-0578.